

TITLE 4: BUSINESS AND SPECIAL LICENSES, REGULATIONS

DIVISION 1: BUSINESS LICENSES AND REGULATIONS

Chapter 5: PEDDLING AND SOLICITING AND HAWKING.

Sections:

- 41.051 Definitions.
- 41.052 License Required and Enforcement Penalty.
- 41.053 Application for License and Application Fee.
- 41.054 Sheriff and EHS Recommendations; Issuance of License, License Limitations.
- 41.055 Payment of License Fees.
- 41.056 Fixed Place of Business Exemption.
- 41.057 Farm Product Exemption.
- 41.058 Veterans' Exemption to Payment of License Fee.
- 41.059 Tax Exempt Organizations Exemption to Payment of License Fee.
- 41.0510 Enforcement
- 41.0511 Revocation of License.
- 41.0512 Validity.

41.051 Definitions.

For purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings set forth herein. Words used in the present tense include the future tense, plural words include the singular and singular words include the plural. Words not specifically defined shall be given their common and ordinary meaning. The word "shall" is mandatory and not merely directory.

(a) "Board of Supervisors" means the Board of Supervisors for the County of San Bernardino.

(b) "Code Enforcement" means the Land Use Services Department, Code Enforcement Division of the County of San Bernardino.

(c) "Clerk of the Board" means the Clerk of the Board of Supervisors.

(d) "EHS" means the Department of Public Health, Division of Environmental Health Services of the County of San Bernardino.

(e) "Fixed Place of Business" means any location where goods, wares, merchandise or services are offered to the public on a regular and continuous basis or where goods or merchandise are regularly stored and/or maintained on the premises, provided such fixed place of business has operated for a period of at least sixty (60) days prior to the time peddling or soliciting is done, and provided the operation of such business is not in violation of any applicable zoning, building, public health or business license laws.

(f) "Handicapped" means any person who:

(1) Has a physical and/or mental impairment(s) which substantially limits one or more of the person's major life activities;

(2) Has a record of such impairment; or

(3) Is regarded as having such an impairment.

(g) "Hawking" means the offering of merchandise on or adjacent to the streets by outcry or by attracting the attention of persons by exposing goods in a public place or by placards, labels, or signals.

(h) "Peddling" means the selling of merchandise which is transported from place to place in the course of approaching prospective customers or selling merchandise or services from door to door.

(i) "Sheriff" means the Sheriff of the County of San Bernardino and/or any deputy or representative appointed by him or her.

(j) "Soliciting" means asking or inviting persons to pay money in return for merchandise or services to be delivered in the future or asking for a charitable donation.

(k) "Tax Exempt Organizations" means any organization qualifying for tax-exempt status under Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g or 23701l of the California Revenue and Taxation Code.

Adopted Ordinance #378 (1933); Amended Ordinance #1007 (1962); Amended Ordinance #1823 (1973); Amended Ordinance #2415 (1980); Amended Ordinance #3385 (1990); Amended Ordinance #3526 (1992); Amended #3730 (1998);

41.052 License Required and Enforcement Penalty.

(a) Hawking Prohibited. Except as set forth in San Bernardino County Code section 41.058 (farm product exemption), and except as part of those licensed activities specified in San Bernardino County Code sections 84.0745 et seq. (Temporary Use Permits), 42.011 et seq. (carnivals), and 42.041 et seq. (swap meets), it shall be unlawful for any person to engage in the business of hawking goods, wares, merchandise, fruits and vegetables or prepared foods within the unincorporated area of the County of San Bernardino.

(b) Peddling or Soliciting License Required. Except as provided in Sections 41.056 and 41.057, it shall be unlawful for any person to engage in the business of peddling goods, wares, merchandise, fruits and vegetables or

prepared foods; or of soliciting orders for goods or services; or of offering services for repair or improvement of real property; or of soliciting donations for charity in an open public place or door to door within the unincorporated area of the County of San Bernardino without first having secured a peddling or soliciting license.

(c) Licenses shall be issued for a one-year period. Upon expiration of the license, the former licensee may apply for a new license in the same manner as a new applicant except that if the licensee applies for a new license before the old license expires, the old license shall remain in force until the Board of Supervisors either approves or denies the application for the new license. Upon obtaining a license issued pursuant to this Section, the licensee shall keep the information submitted on the application current by immediately notifying the Sheriff's Office, the County Code Enforcement Division, and if additionally required to have a food permit, the Division of Environmental Health Services in writing of any change or occurrence which affects or changes the status of the licensee.

Adopted Ordinance #378 (1933); Amended Ordinance #1007 (1962); Amended Ordinance #1823 (1973);
Amended Ordinance #2415 (1980); Amended Ordinance #3385 (1990); Amended Ordinance #3730 (1998);

41.053 Application for License and Application Fee.

(a) License Application. The applicant for any peddling or soliciting license shall provide to the Clerk of the Board, on a form prepared by the Clerk of the Board, the following information:

- (1) The name, address, and telephone number of the applicant;
- (2) The name, address, and telephone number of each person designated by the applicant to peddle or solicit under the applicant's license;
- (3) The place and date of any conviction within the past five (5) years for a crime of moral turpitude, criminal battery, fraud, burglary or theft of the applicant and, if applicant is a corporation, the corporation's officers, directors and majority stockholders and each person designated by the applicant to peddle or solicit under his or her license;
- (4) Such fingerprints and/or other documents which reasonably relate to licensing under this chapter as may be required by the Sheriff of the applicant and, if applicant is a corporation, the corporation's officers, directors and majority stockholders and each person designated by the applicant to peddle or solicit under his or her license;
- (5) A copy of the State of California Sales Tax Permit (California Revenue and Taxation Code Section 6066) for the applicant's activities attached to the application;
- (6) A description of every type of merchandise or service that the applicant proposes to peddle or solicit;
- (7) If applicable, a description of the type, manufacturer and supplier of any goods to be sold;
- (8) A designation of the location or locations at which place(s) the applicant proposes to peddle or solicit and the date(s) and time(s) of same;
- (9) If applicant is claiming a license fee exemption for a tax exempt organization, the application shall be accompanied by a copy of the determination of the tax exempt status issued by the Franchise Tax Board of the State of California showing the applicant is exempt under Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, or 23701i of the California Revenue and Taxation Code.

(b) License Application Fee. The application fee set forth in the San Bernardino County Code Schedule of Fees, not including cost of fingerprinting, shall accompany all written applications for licenses issued under this chapter. The payment shall be accepted only in cash, certified check or money order.

Adopted Ordinance #378 (1933); Amended Ordinance #1007 (1962); Amended Ordinance #1823 (1973);
Amended Ordinance #2415 (1980); Amended Ordinance #3385 (1990); Amended Ordinance #3526 (1992);
Amended Ordinance #3730 (1998);

41.054 Sheriff and EHS Recommendations; Issuance of License, License Limitations.

(a) Investigation by Sheriff and EHS. Upon the filing of the application required by Section 41.053, together with the application fee, the Clerk of the Board shall transmit one (1) copy to the appropriate Sheriff's substation, and where required for issuance of a food permit, one (1) copy to the appropriate EHS office. The applicant shall cooperate with the Sheriff and EHS in conducting their investigation and shall if requested provide the Sheriff or EHS other documents or materials which may be requested which reasonably relate to the course of the Department's investigation. The Sheriff and if required EHS shall report to the Clerk of the Board in writing recommending approval or denial of the license and stating the reasons therefor.

(b) Issuance of Licenses. The Board of Supervisors shall not order the issuance of the license unless all of the following requirements are met:

- (1) The applicant has submitted a correct and complete application form both as to the applicant and, if applicant is a corporation, the corporation's officers, directors and majority stockholders and each person designated by the applicant to peddle or solicit under his or her license;
- (2) The applicant has provided fingerprints of the applicant, and if applicant is a corporation, the corporation's officers, directors, majority stockholders and each person designated by the applicant to peddle or solicit under his or her license;
- (3) The applicant has paid the application fee and fingerprinting fee to the Clerk of the Board and to the

Sheriff;

(4) There is no known cloud upon the title to or ownership of the goods to be sold by the applicant under the license;

(5) Neither the applicant nor, if applicant is a corporation, the corporation's officers, directors and majority stockholders and each person designated by the applicant to peddle or solicit under his or her license has within the past five (5) years been convicted of a crime of moral turpitude, criminal battery, fraud, burglary, or theft;

(6) The time(s) and place(s) of the proposed license activities is in accordance with regulations set forth in this chapter;

(7) If required, the applicant has applied for and received a food permit from EHS.

Adopted Ordinance #378 (1933); Amended Ordinance #1007 (1962); Amended Ordinance #1823 (1973); Amended Ordinance #2415 (1980); Amended Ordinance #3385 (1990); Amended Ordinance #3526 (1992); Amended Ordinance #3730 (1998);

41.055 Payment of License Fees.

Any person required by this chapter to have a license shall, upon approval of said license by the Board of Supervisors, pay a license fee in the sum set forth in the San Bernardino County Code Schedule of Fees to the San Bernardino County Tax Collector and shall pay to the Tax Collector said license fee annually thereafter on or before the anniversary date of the Board's approval.

Adopted Ordinance #378 (1933); Amended Ordinance #1007 (1962); Amended Ordinance #1823 (1973); Amended Ordinance #2415 (1980); Amended Ordinance #3385 (1990); Amended Ordinance #3730 (1998);

41.056 Fixed Place of Business Exemption.

Any person having a fixed place of business within the County of San Bernardino shall not be required to obtain a peddling or soliciting license.

Adopted Ordinance #378 (1933); Amended Ordinance #1007 (1962); Amended Ordinance #1823 (1973); Amended Ordinance #2415 (1980); Amended Ordinance #3385 (1990); Amended Ordinance #3730 (1998);

41.057 Farm Product Exemption.

No peddling or soliciting license shall be required of any farmers selling farm products produced by them nor for the seasonal sales of Christmas trees or Halloween pumpkins.

Adopted Ordinance #378 (1933); Amended Ordinance #1007 (1962); Amended Ordinance #1823 (1973); Amended Ordinance #2415 (1980); Amended Ordinance #3385 (1990); Amended Ordinance #3730 (1998);

41.058 Veterans' Exemption to Payment of License Fee.

No license fee shall be required for the issuance of a license to any person who was honorably discharged or honorably relieved from United States military service. A license for such a person shall be required under the provisions of this chapter, as in other cases, but no license fee shall be charged. Application and fingerprinting fees shall be required for licenses issued under this section. The exemption within this section shall not apply when the merchandise involved includes spirituous, malt, vinous, or other intoxicating liquor.

Adopted Ordinance #378 (1933); Amended Ordinance #1007 (1962); Amended Ordinance #1823 (1973); Amended Ordinance #2415 (1980); Amended Ordinance #3385 (1990); Amended Ordinance #3730 (1998);

41.059 Tax Exempt Organization Exemption to Payment of License Fee.

Whenever any person intends to peddle or solicit goods, wares, services or merchandise for the purpose of raising funds or soliciting donations for a tax-exempt organization, said applicant may apply to the Board of Supervisors for a license to be issued without payment of the license fee. If satisfied that the funds will be used for the purposes mentioned herein, the Board shall order the issuance of a license for said peddling or solicitation for a term fixed by the Board. Payment of application and fingerprinting fees shall be required for a license issued under this section. The exemption within this section shall not apply when the merchandise involved includes spirituous, malt, vinous, or other intoxicating liquor.

Adopted Ordinance #378 (1933); Amended Ordinance #1007 (1962); Amended Ordinance #1823 (1973); Amended Ordinance #2415 (1980); Amended Ordinance #3385 (1990); Amended Ordinance #3730 (1998);

41.0510 Enforcement.

(a) The provisions of the Chapter shall be enforced by officers and authorized representatives of the San Bernardino County Sheriff's Department, by officers and authorized representatives of County Code Enforcement, or by authorized representatives of the County Department of Public Health, Division of Environmental

Health Services (EHS), in accordance with Sections 11.021 et seq. (Violations and Citations) of Chapter 2 of Division 1 of Title 1 of the San Bernardino County Code. Copies of all licenses, once issued, shall be provided by the Clerk of the Board of Supervisors to the Sheriff, Code Enforcement and, if appropriate, to EHS. A license issued pursuant to this Chapter will authorize the licensee to peddle or solicit in the locations and during the time designated in his or her application, but only when the peddling and soliciting does not interfere with the free flow of vehicle traffic and does not obstruct pedestrian traffic. There shall be no peddling or soliciting until the license is issued. Licensees shall comply with all applicable state laws, including California Business and Professions Code Section 17510 et seq. and Health and Safety Code provisions.

(b) In addition to any criminal action which may be taken, any authorized officer may seize the goods, wares, merchandise, fruits and vegetables, or prepared foods offered for sale contrary to section 41.052(a) of this Chapter, as well as food equipment, defined as equipment used to prepare or display food, and hold said seized items pending a hearing before a County Hearing Officer, pursuant to section 12.270 et seq. of Chapter 27 of Division 2 of Title 1 of this Code. Seller shall be personally served by the authorized officer with a Receipt, identifying the seized items, and a Notice of Hearing, which shall have the date, time, and place (address) of the hearing on the seized items. Said hearing must be held within thirty (30) days following the giving of notice of such seizure and hearing to the seller. If the seller is unavailable or unknown, the Receipt and Notice of Hearing may be posted at the location where the items were offered for sale.

(c) At the hearing, the County Hearing Officer shall determine whether the seller was "hawking" as defined in section 41.051(g) and as prohibited in section 41.052(a). If, after the hearing, the County Hearing Officer determines, based on the evidence presented, beyond a reasonable doubt that the seller was, in fact, "hawking" as defined in section 41.051(g) and as prohibited in section 41.052(a), the seized items will be considered forfeited to the County, and the authorized representatives of the County may destroy or otherwise dispose of the seized items no sooner than the ninetieth (90th) day after the date the decision of the County Hearing Officer is delivered or mailed to seller.

(d) If the items seized are perishable, the County may dispose of the perishable items immediately. If the seller waives his or her right to a hearing, then the nonperishable seized items will be considered forfeited to the County and may be immediately destroyed or otherwise disposed of by the County. If the seller or his or her agent does not appear for the hearing provided for in this section, the nonperishable seized items shall be deemed abandoned, forfeited to the County, and may be immediately destroyed or otherwise disposed of by the County. If the nonperishable seized items are evidence in a criminal proceeding, they shall not be returned or destroyed pending release by the appropriate authorities.

(e) Pursuant to Code of Civil Procedure section 1094.6, any action to review the decision of the County Hearing Officer shall be commenced no later than the ninetieth (90th) day after the date said decision is delivered or mailed to seller.

Adopted Ordinance #378 (1933); Amended Ordinance #1007 (1962); Amended Ordinance #1823 (1973); Amended Ordinance #2415 (1980); Amended Ordinance #3385 (1990); Amended Ordinance #3730 (1998); Amended Ordinance #3935 (2004);

41.0511 Revocation of License.

Proceedings for revocation of any license issued under this chapter shall be pursuant to San Bernardino County Code Section 12.270 et seq. (Administrative Hearings). The hearing in any revocation proceeding shall be before the Board of Supervisors unless the Board, in its sole discretion, appoints a hearing officer to conduct the hearing. It shall be sufficient service of any notice provided for in Section 12.270 et seq. for the Clerk of the Board to mail the notice by first class mail, postage prepaid, to the licensee at the licensee's mailing address shown on the licensee's most recent application or otherwise filed by the licensee with the Clerk of the Board. Service may also be made by personal service on the licensee or by leaving the notice at the licensed premises or at the licensee's residence in the custody of a person over the age of eighteen (18) years of age or older. The decision of the Board of Supervisors in a revocation appeal shall be final.

A license issued under this chapter may be revoked upon one (1) or more of the following grounds:

- (a) That the holder practiced fraud or deceit in being licensed under this chapter;
- (b) That the holder or the holder's employee violated provisions of this chapter;
- (c) That the holder has been convicted in a court of competent jurisdiction of a crime involving moral turpitude, criminal battery, fraud, burglary or theft within the past five (5) years;
- (d) That the license was issued in error.

Adopted Ordinance #378 (1933); Amended Ordinance #1007 (1962); Amended Ordinance #1823 (1973); Amended Ordinance #2415 (1980); Amended Ordinance #3385 (1990); Amended Ordinance #3730 (1998);

41.0512 Validity.

If any section, subsection, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional

by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this chapter.

Adopted Ordinance #378 (1933); Amended Ordinance #1007 (1962); Amended Ordinance #1823 (1973);
Amended Ordinance #2415 (1980); Amended Ordinance #3385 (1990); Amended Ordinance #3730 (1998);